

*John D. Kelly (1921-2000)*  
*John Kenneth Rode (retired 2003)*  
*Shawn P. Kelly*  
*George J. Wilson*  
*Loris Teppieri*  
*Kevin E. Way*  
*Edward J. Kelly*  
*Peter D. Garone*  
*Brian M. Dunphy*  
*Hilary M. Wissemann*  
*Anita A. Ajiboye*  
*Christopher M. Aliviso*  
*Mahe-noor Baig*  
*Evan J. Becker*  
*Emma E. Browning*  
*Jessica A. Crimi*  
*Samantha L. DeSousa*  
*Evan B. Feuerstein*  
*Shannon E. Fillmore*  
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January 26, 2021

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*Tamir Saland*  
*Steve K.F. Scott*  
*Brian L. Smith*  
*Eric P. Tosca*  

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*Firm Administrator*  
*Thomas G. Schumm*

Honorable Judge Anne Y. Shields, U.S.M.J.  
United States District Court: Eastern District  
100 Federal Plaza  
P.O. Box 830  
Central Islip, New York 11722  
Courtroom 830

Re: Lepper v. Village of Babylon, et al.  
Case No.: 2:18-CV-07011  
Our File No.: PDG/EPT 148530-752

Dear Honorable Judge Shields:

The parties met and conferred at 2:00 p.m. on January 26, 2021 to discuss a joint letter proposed by me in response to your Honor's directive of January 19, 2021. After the conference between counsel, I formulated a joint letter based on the parties' understanding, but Mr. Morris responded by changing the terms. As such, the parties cannot agree on a joint letter to this Honorable Court.

Plaintiffs are not retaining an expert, but have named James Brown, P.E. as a fact witness. Plaintiffs contend that Dr. Brown examined the tree house. Dr. Brown's letter concerning the structural safety of the treehouse was filed on March 3, 2019 (Electronic Docket #36) relative

to an agreement reached before Judge Bianco to stay enforcement of the Village Code and stay use of the tree house by Plaintiffs.

Defendants retained an expert Joseph Danatzko, P.E. The expert exchange has been made and filed with this Honorable Court on January 5, 2021 (Electronic Docket #94). Attached as Exhibit "A" is curriculum vitae of Mr. Danatzko, which was submitted in our expert exchange.

We reserve the right to object to testimony of Dr. Brown as a fact witness. It is unclear how Plaintiffs intend to call Dr. Brown as a fact witness when he was only called upon to render an opinion as to the alleged safety of the tree house. Since Dr. Brown was chosen to render an opinion as the safety of the tree house initially, defendants expected that Plaintiffs would produce him as an expert witness and provide an expert exchange. Plaintiffs provided no expert exchange. Only recently in a meet and confer of December 15, 2020 in discussing the experts did Plaintiffs' counsel advise that Dr. Brown would not be used as an expert and that Plaintiffs would not use an expert.

Plaintiffs are not taking the deposition of Mr. Danatzko. In our conference, we agreed that the deposition of Dr. Brown would take place by March 1, 2021. However, Plaintiffs' counsel now advised after the meet and confer that Plaintiffs object to Dr. Brown's deposition. We submit that we are entitled to question Dr. Brown as to his letter and his findings and respectfully submit that the Defendants should be permitted to take his deposition. We should be given leave to question Dr. Brown as to his observations of the tree house and any measurements or tests he conducted as well as any other relevant information he has concerning this matter.

Thank you for your good consideration of this matter.

Respectfully submitted,

KELLY, RODE & KELLY, LLP

BY: Eric P. Tosca  
Eric P. Tosca

EPT:jl  
Enc.

cc: LAW OFFICES OF CORY H. MORRIS  
Attorneys for Plaintiffs  
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Dix Hills, New York 11746  
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# EXHIBIT “A”

**AFFILIATED ENGINEERING LABORATORIES, INC.**  
*Engineering Consultants*

777 New Durham Road  
Edison, NJ 08817

Phone: (732) 429-1200

Fax: (732) 429-1201

**Resume:** **JOSEPH M. DANATZKO**

**Education:** Bachelor of Science – Civil Engineering  
Lafayette College, Easton, PA, 2007

Master of Science – Civil/Structural Engineering  
The Ohio State University, Columbus, OH, 2010

**Professional:** Professional Engineer – New Jersey License No. 24GE04963800

Professional Engineer – New York License No. 092836

Professional Engineer – Pennsylvania License No. PE081326

Professional Engineer – North Carolina Certificate No. 047419

Building Inspector – New Jersey License No. 010903

Residential and Small Commercial Specialist

Industrial and Commercial Specialist

Mechanical Inspector – 1 and 2 Family

Residential and Commercial Building/Mechanical Inspector –  
Commonwealth of Pennsylvania Certification No. 05933

ICC Certified Residential Building Inspector

ICC Certified Residential Mechanical Inspector

ICC Certified Commercial Building Inspector

ICC Certified Commercial Mechanical Inspector

Member – American Society of Civil Engineers (ASCE)

Member – American Society of Civil Engineers (ASCE) – Structural  
Engineering Institute (SEI)

Member – Snow and Ice Management Association (SIMA)

**Continuing  
Education:**

Structural Forensic Engineering

Underpinning and Strengthening of Foundations

Machine Foundations

Analysis and Design of Liquid Structures

Evaluation of Reinforced Concrete Structures

Epoxy Grouts in Industrial Environments

High Strength Concrete and Steel Reinforcement

Shear Wall Systems

Portland Limestone Cements

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Blast Testing for Structural Performance  
Wooden Truss Design  
Residential Decks/Balconies/Roofs  
Residential Hurricane Tie Systems  
Occupational Safety & Health Administration (OSHA) Courses:  
    OSHA 510: Occupational Safety & Health for the  
        Construction Industry  
    OSHA 7505: Accident Investigations  
    OSHA 30-hr Construction Outreach Training  
    OSHA 2055: Cranes in Construction  
    OSHA 2264: Permit-Required Confined Space Entry  
    OSHA 3015: Excavation, Trenching and Soil Mechanics  
    OSHA 3115: Fall Protection  
    OSHA 7500: Introduction to Safety & Health Management  
    OSHA: Expectations and Accountability for Managing Fall Hazards  
        in Multiple Employer Construction Sites  
ASTM Workshop on Multifactorial Analysis of Slip and Fall Events  
Various Continuing Education Courses in building code implementation,  
construction safety and environmental hazards

**Professional  
Experience:**

**Pennsylvania Department of Transportation**, Allentown, PA  
Civil Engineering Intern

Assistant to Pennsylvania D.O.T. Project Supervisor on roadway repaving projects with responsibilities including: project inspector; budget management and project tracking; field inspections of paving/resurfacing projects and adjacent structures; record keeping; monitoring of contractor procedures for compliance with contract requirements; safety inspections.

**Perini Corporation- Civil Division**, Newark, NJ  
Civil Engineering Intern

Assistant to Project Manager and Construction Manager on a bridge deck reconstruction project with responsibilities including: field inspections of structural members and installation; supervision of construction work; safety inspections; review of shop drawings and as-built calculations; technical project submissions.

**Bohler Engineering**, Warren, NJ  
Design Engineering Intern

Design Engineer supporting Project Manager for commercial and residential subdivision site design with responsibilities including: site

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inspections including evaluation of adjacent structures; production of conceptual designs and site plan drawings; design of parking areas, drive aisles and walkways; stormwater management and runoff calculations; site grading plans; design of retention, detention and underground stormwater management systems; sizing of piping and outlet structures; design of on-site utilities and lighting; review of township and state codes.

**Washington Group International**, Princeton, NJ  
Engineer I - Nuclear Division Structural Group

Design Engineer for nuclear power plant upgrades/modifications with responsibilities including: structural design and analysis including affects from adjacent construction; field inspections of structural systems and constructability reviews; design of concrete and steel structures; analysis of existing steel and concrete structures; development and review of construction drawings; analysis of structural elements through calculations and computer-aided-design (CAD); production and review of detailed engineering calculations; development of calculation standards and training of employees regarding American Institute of Steel Construction (AISC) specifications.

**CDI Corporation**, Princeton, NJ  
Structural Engineer

Consulting Engineer for an upgrade project at a Florida Power and Light facility involving trolley cranes. Responsibilities included: design, analysis and qualification of new, modified and existing concrete and steel structures; assessment and evaluation of adjacent structures relative to proposed construction; development and review of construction drawings; detailed design of steel and concrete connections; review of steel and concrete calculations; AISC and ACI code compliance; inspections and constructability reviews; ensuring conformance with Independent Spent Fuel Storage Installation (ISFSI) requirements per NRC guidelines.

**Inglese Architecture and Engineer**, East Rutherford, NJ  
Project Drafter/Structural Engineer

Project Drafter/Structural Engineer supporting one-, two and multi-family residential construction projects including commercial structures and mixed-use residential/commercial with responsibilities including: site inspections including field constructability reviews and assessment of exiting structures; structural investigations involving building rehabilitation and demolition; generation of construction drawing packages for construction, planning board submission and bid; conceptual building

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design; generation and revision of detail drawings; design of stormwater management systems, including retention and detention basins; design of stormwater outlet structures; design and specification of structural members and materials; design and analysis of steel, concrete and timber structures; design of parking structures and on-site parking; design of driveways, drive aisles and walkways; design and specification of structural shear-wall systems; design and evaluation of retaining wall systems; design and revision of heating, ventilation and air-conditioning (HVAC) systems, plumbing systems, electrical systems, lighting plans, drainage systems and grading; analysis of designs for United State Green Building Council LEED rating.

**The Ohio State University**, Columbus, OH  
Graduate Research Assistant/Student Project Team Advisor

Conducted research in the field of Sustainable Structural Design and Engineering; performed research related to prestressed and precast concrete design; research into asphalt pavement designs, the impact of structural vibrations of structural elements and progressive structural collapse; served as advisor and mentor to Student Project Teams.

**The Spear Group**, Norcross, GA  
Consulting Civil/Design Engineer

Consultant under contract to Public Service Electric & Gas and Consolidated Edison, Inc.

**Public Service Electric & Gas**, Newark, NJ

Responsibilities included: site inspections involving constructability reviews and assessment of adjacent structures; field assessment related to emergency investigations and storm damage response; conceptual designs; field engineering; design of concrete foundations, piling and steel structures for electrical equipment; design and analysis of A-frames associated with electrical equipment; design and review of submittal packages for new and existing structures; generation of structural details and drawings; development of design aids and programs; design of drainage systems and grading; design and review related to spill prevention countermeasure and containment plans.

**Consolidated Edison, Inc.**, New York, NY

Responsibilities included: site inspections involving constructability

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reviews and assessment of adjacent structures; field assessment related to emergency investigations and storm damage response; development of spill prevention countermeasures and containment in new designs and plans; transformer replacements and upgrades throughout the New York metropolitan area, review of in-house and vendor submittal packages.

**Affiliated Engineering Laboratories, Inc., Edison, NJ**  
Engineering Consultant

Forensic engineering investigation and evaluation of design and construction elements related to civil, structural and safety engineering, including: walkways, stairways, roadways, site improvements and building construction. Engineering and safety analyses related to building code compliance and accident evaluation cause and origin analysis.